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| 10/618,818 | 07/15/2003 | Won-Gyu Kim | 0662-0188P | 5903 |
| 2292 7590 04/03/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747 | | | | |
| EXAMINER VAKILL, ZOIREH | | | | |
| ART UNIT 1614 | | PAPER NUMBER | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/618,818

Applicant(s)

KIM, WON-GYU

Examiner

ZOHREH VAKILI

Art Unit

1614

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claims 1-8 are presented for examination.

Applicant's Amendment filed September 24, 2007 has been received and entered into the present application. Accordingly, claim 1 is currently amended. Claims 1-2 and 5-6 are pending and are herein examined on the merits.

Applicant's arguments, filed September 24, 2006, have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce et al. (US Pub. No. 2004/0247744 A1) and in view of Shaft et al. (US Patent No. 6395321 B1), already of record set forth at pages 2-5 of the previous Office Action dated September 24, 2007.

Pearce et al. teach an orally soluble edible films that include many ingredients. The composition is made of water-soluble sweetening agents such as monosaccharides, disaccharides and polysaccharides such as xylose, ribose, glucose (dextrose), mannose, galactose, fructose (levulose), sucrose (sugar), maltose, invert sugar (a mixture of fructose and glucose derived from sucrose), partially hydrolyzed starch, corn syrup solids, dihydrochalcones, monellin, steviosides, and glycyrrhizin (see page 4, paragraph 0040). Pearce et al. further teach a gasified candy that is usually hard candy containing gas, such as carbon dioxide. Such a candy may be made by a process which comprises melting crystalline sugar, contacting such sugar with gas maintaining the temperature of said sugar during said absorption above the solidification temperature of the melted sugar, and cooling said sugar under pressure to produce a solid amorphous sugar containing the gas. Upon the release of the pressure, the solid gasified candy fractures into granules of assorted sizes (see page 5, paragraph 0050). In producing gasified candy by a commercial process conducted in accordance with this disclosures, gasified candy may be produced from a mixture of sucrose, lactose and corn starch dissolved in water and evaporated to a sugar melt (see page 5, paragraph 0055). The gasified candy component of the snack may be a hard sugar product having bubbles of gas entrapped. The gasified candy can be prepared from any of the available sugars such as glucose, fructose, sucrose, lactose and the like, alone or in combination, may be employed. A mixture of sucrose with corn syrup (containing glucose, maltose, dextrin) may also be satisfactory (see page 6, paragraph 0060). The gases used to prepare the gasified candy may be any of the

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commonly-available gases which are substantially unreactive with the sugar or sugars being employed and include such gases as carbon dioxide, nitrogen or air, but carbon dioxide is useful (see page 6, paragraph 0061). Following the carbonation, the pressure was maintained while the vessel was cooled so as to solidify the sugar melt. Rapidly releasing the pressure fractured the solidified carbonated candy into multiple pieces of various sizes (see page 6, paragraph 0070). The second type of effervescence is the quiet foamy type. This can be obtained by mixing ingredients such as sodium bicarbonate and citric acid in the presence of water (see page 7, see paragraph 0071). Vitamins are organic substances that are ordinarily included in the diet but some individuals may choose to supplement their vitamin intake. Some example vitamins that may be used in the films herein include the following: Vitamin A, Vitamin D, Vitamin E, Vitamin C (ascorbic acid), Vitamin B1, Vitamin B2, Vitamin B3, Vitamin B6, and Vitamin B12 (see page 17, paragraph 0186-0195).

Shaft et al. teach in the present invention packaging of food items such as, cheese blends; pizza toppings; peanut butter; jelly; cream cheese; cookie dough; and candies (see col. 11, lines 36-44) by hermetic package entirely enclosed by peelable hermetic seals (see col. 14, claim 25, lines 32-33).

Clearly, one having ordinary skill in the art would have been motivated to use the teaching of Pearce et al. for the preparation of a carbonated candy-type vitamin. Pearce et al. disclose of a carbonated candy incorporated by vitamins, carbon dioxide for gas, sucrose, and lactose or glucose. Shaft et al. teach the packaging and enclosure of the product such as candy in a hermetic package. As combined, the

teachings of Pearce et al. for making a carbonated candy type vitamin and the packaging of the product taught by Shaft et al., result in the claimed invention.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teachings of the above references and produce the carbonated candy-type vitamin in a hermetic package.

Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and as a whole, prima facie obvious.

Response to Arguments

Applicant argues that Pearce is directed to an orally soluble edible film and the orally soluble edible film contains carriers such as hydroxypropylmethyl cellulose, carboxymethyl cellulose, etc. Also Applicant argues that the final form of the candy-type vitamin is a crushed mass, and bears no resemblance to a film.

Examiner does not agree with Applicant's remarks regarding the composition containing carriers such as hydroxypropylmethyl cellulose, carboxymethyl cellulose, etc. Applicant does not show that these carriers would materially affect the nature of the claimed invention. The only difference between the prior art and the instant claims is that one product is a film and the other is a candy-type, which film can be considered a candy-type. In the absence of a clear definition of bounds and metes of the phrase "candy-type", edible film is considered a type of candy or is a candy-type. Also, the determination of the final product shape, or its consistency is considered to be within the

skill of the art in the absence of evidence to a contrary.

Further, Applicant argues that Shaft does not teach the hermetic package for a carbonated candy-type. It is not necessary for Shaft to teach the hermetic package for a carbonated candy-type. Shaft teaches hermetic packages for food and candies whether these candies are carbonated or not does not have a patentable weight. Applicant is reminded that is not an anticipation rejection this is an obviousness rejection. In obviousness rejection a combination of references is used, and the references are relied upon in combination and are not meant to be considered separately as in a vacuum. It is the combination of all of the cited and relied upon references that make up the state of the art with regard to the claimed invention. Applicant's claimed invention fails to patentably distinguish over the state of the art represented by the combination of the cited references. *In re Young*, 403 F.2d 754, 159 USPQ 725(CCPA 1968); *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Moreover, it is noted that rejections under 35 U.S.C. 103(a) are based on combinations of references, where the secondary references are cited to reconcile the deficiencies of the primary reference with the knowledge generally available to one ordinary skill in the art to show that the differences between Applicant's invention and the prior art are such that they would have been modifications that were *prima facie* obvious to the skilled artisan. It is noted that the claimed invention is not required to be expressly suggested in its entirety by any one or all of the references cited under 35 U.S.C. 103(a). Rather, the test is what the combined teachings of the references would

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have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

For these reasons, and those already made of record at pages 2-5 of the previous Office Action dated September 24, 2007 of which such reasons are incorporated herein by reference, rejection of claims 1, 2, 5, 6 remain proper and is **maintained**.

Conclusion

No claims of the present application are allowed.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is (571)-272-3099. The examiner can normally be reached on Monday-Friday (8:30 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili
Patent Examiner
Art Unit 1614

March 24, 2008

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614

